

1 Adam D. Smith, Esq.
Nevada Bar No. 9690
2 GLEN J. LERNER & ASSOCIATES
4795 South Durango Drive
3 Las Vegas, Nevada 89147
Telephone: (702) 877-1500
4 Facsimile: (702) 932-7043
E-mail: asmith@glenlerner.com
5 Attorneys for Plaintiff

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 CLAYTON R. BAKER,

9 Plaintiff,

10 vs.

11 UNITED STATES OF AMERICA, DOES I-X, and
12 ROE CORPORATIONS I-X, inclusive,

13 Defendants.

) CASE NO.: 2:11-cv-00982-KJD-LRL
)
)

) **STIPULATION AND ORDER TO**
) **DISMISS WITHOUT PREJUDICE**
)
)

14 WHEREAS, Plaintiff filed his Complaint in this action against Neil H. Cabuhat ("Cabuhat")
15 in the Eighth Judicial District Court, Clark County, Nevada, on May 10, 2011;

16 WHEREAS, on June 10, 2011, the United States District Attorney, by virtue of the authority
17 vested in him by the Attorney General of the United States of America under 28 CFR § 15.4,
18 executed a Certification of Scope of Employment pursuant to 28 U.S.C. § 2679(d)(2) (the
19 "Certification"), certifying that Cabuhat was acting within the course and scope of his employment
20 as an employee of the United States Air Force at the time of the incident referred to in Plaintiff's
21 Complaint;

22 WHEREAS, based upon the Certification, the United States of America was substituted as
23 Defendant in this action in the place and stead of Cabuhat pursuant to 28 U.S.C. § 2679(d)(2) on
24 June 22, 2011;

25 WHEREAS, Defendant, United States of America, filed its Notice of Removal of this action
26 to this Court pursuant to 28 U.S.C. §§ 1442(a) and 2679(d)(2) on June 22, 2011;

27 WHEREAS, Defendant, United States of America, filed a Motion to Dismiss on June 22,
28 2011; and

1 WHEREAS, based upon the Certification, the parties desire to stipulate to the dismissal of
2 Plaintiff's Complaint without prejudice.

3 Based upon the foregoing,

4 IT IS HEREBY STIPULATED that Plaintiff's Complaint shall be dismissed without
5 prejudice;

6 IT IS FURTHER STIPULATED that Plaintiff may re-file his Complaint against the United
7 States of America within six months after the date of mailing of notice of final denial of Plaintiff's
8 administrative claim pursuant to 28 U.S.C. § 2401(b); and

9 IT IS FURTHER STIPULATED that, by entering into this Stipulation, the United States
10 does not waive any right, claim, or defense the United States has or may have with respect to any re-
11 filed Complaint.

12 Dated this 13 day of July, 2011

Dated this 12th day of July, 2011

13 GLEN J. LERNER & ASSOCIATES

UNITED STATES ATTORNEY

14
15 By: Adam D. Smith
16 Adam D. Smith
17 4795 South Durango Drive
Las Vegas, Nevada 89147

By: Blaine T. Welsh
Blaine T. Welsh
Assistant United States Attorney
333 Las Vegas Boulevard South
Suite 5000
Las Vegas, Nevada 89101

18
19 **IT IS SO ORDERED:**

20 DATED this 14 day of July, 2011

21
22 Blaine T. Welsh
UNITED STATES DISTRICT JUDGE

23 Respectfully Submitted:

24 GLEN J. LERNER & ASSOCIATES

25
26 By: Adam D. Smith, Esq.
27 Adam D. Smith, Esq.
28 Nevada Bar No. 9690
4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiff